

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 25TH DAY OF FEBRUARY 2020

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

A. No.302 of 2020
in
C.S.No.295 of 2012

BANK OF INDIA,
HAVING ITS HEAD OFFICE AT
STAR HOUSE C-5, G BLOCK,
BANDRA KURLA COMPLEX,
BANDRA EAST, MUMBAI 400051.
AND HAVING LARGE CORPORATE
BRANCH OFFICE AT 4TH FLOOR,
TARAPORE TOWERS, NO.826,
ANNA SALAI, CHENNAI-600 006,
REP.BY ITS ASST.GENERAL MANAGER.PLAINTIFF

-Versus-

1.ORIENTAL INSURANCE COMPANY
LIMITED, ORIENTAL HOUSE,
MCDO-III, NO.7, J.TATA ROAD,
CHURCHGATE, MUMBAI-400 020.

2. PARAMOUNT AIRWAYS PRIVATE LTD
ALEXANDER SQUARE, NO.35,
2ND FLOOR, SARDAR PATEL ROAD,
GUINDY, CHENNAI - 600 032.DEFENDANTS

A.No.302 of 2020:

Bank of India,
Head Office at 'STAR HOUSE'
C-5,"G" Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400051
& Large Corporate Branch Office at
Tarapore Towers
No.826, 4th Floor, Anna Salai,
Chennai 600 006
rep. by its Asst. General Manager

..Applicant/Plaintiff

-Versus-

1.Oriental Insurance Company Limited,
Oriental House, MCDO-III,
No.7, J, Tata Road, Churchgate,
Mumbai 400 020.

..1st Respondent/Defendant

2.Paramount Airways Private Limited,
Alexander Square,
No.35, 2nd Floor, Sardar Patel Road,
Guindy, Chennai 600 032.

..2nd Respondent/Defendant

Application praying that this Hon'ble Court be pleased to allow this application to fairly defend its stand by filing a Replay Statement to the Written Statement of the 1st Respondent/Defendant in terms of the affidavit supported by the application therein.

This application coming on this day before this court for hearing the court made the following order:-

This application is filed seeking to fairly defend its stand by filing a reply statement to the written statement of the 1st respondent/defendant in terms of the affidavit supported by the application therein.

2.Heard the learned counsel appearing for the applicant/plaintiff and the respondent/defendant.

3.The question involved in this application is, whether the plaintiff is having a right to file re-joinder to the written statement and if so, at what point of time?

4. This application is filed by Bank of India against Insurance Company/1st defendant and Paramount Airways Private Limited/2nd defendant, which is under liquidation. The suit is for recovery of money. The said suit was laid on 02.04.2012 and taken on file of this Court in C.S.No.295 of 2012. The 1st defendant herein has filed its written statement in the year 2013. After the Commercial Courts Act came in to force, this suit was determined to be a Commercial Dispute and the provision of Commercial Courts Act was applied after determination of jurisdiction on 05.09.2018. Thereafter, issues were framed and under the case management hearing, dates were fixed for examination of witnesses.

5. At that juncture, the defendant has filed an application to receive the additional document and the same was allowed. Thereafter, the present application is filed to receive the reply statement.

6. The learned counsel appearing for the applicant/plaintiff would submit that, since the copy of the Surveyor Report was not served to the plaintiff, they were not in a position to repudiate the content of the Surveyor Report. Therefore, they are now forced to file the application to receive the reply statement. Whereas, in the counter filed by the first defendant, it is stated that the excuse of the plaintiff that filing of the Surveyor Report as an additional document by the 1st defendant has

necessitated them to file re-joinder, is frivolous and unsustainable. The

Surveyor Report was well within the knowledge of the plaintiff since 2010. Only based on that, the suit itself was laid. The first defendant repudiated the claim of the plaintiff widely quoting the surveyor report in the written statement filed in the year 2013. The only change is the introduction of the said surveyor report copy by way of filing an application to receive it as an additional document.

7. Now, by way of reply statement, the plaintiff tries to adduce several facts, which never pleaded in the plaint. Furthermore, the learned counsel appearing for the 1st respondent/1st defendant takes a strong exception to the averment made in para 4 of the application while alleges that the surveyor report was never served on the applicant herein, despite repeated request. Only recently surveyor report is filed. Therefore, they thought it fit not to file the reply statement.

8. It is submitted by the learned counsel appearing for the 1st respondent herein that the surveyor report was given to the plaintiff long ago and they never formally asked for a copy of the surveyor report at any point of time. Now after a gap of nearly 8 years after filing the suit and 7 years after filing the written statement, under the garb of reply statement, he wants to introduce new facts and pleadings quoting the non-availability of the survey report.

9. The learned counsel appearing for the plaintiff, to buttress

his submission, would cite judgments of the High Court of Madras, Kerala and Delhi, where the Courts considered when the replication can be entertained and whether there is any time limit for receiving the reply statement/replication. the courts have repeatedly held that the convention of receiving the reply statement/replication is to provide, parties to elucidate the facts, which needs explanation to the contention raised in the written statement, but it cannot be an excuse to introduce new cause of action and new facts, which were never pleaded.

10. In this case, beside making extensive averment about the facts, one of the contentions raised in the reply statement is non-availability of surveyor report and refusal to furnish the copy by the first defendant in spite of several requests. As apprehended by the learned counsel appearing for the first defendant, if this contention is to be introduced by way of a reply statement inspite of the fact that the said allegation has not been supported by any document, naturally, it will prejudice the first defendant. The availability of surveyor report is known to the plaintiff even before instituting the suit and the surveyor report has been extensively referred to in the written statement. If really, the plaintiff was not in possession of surveyor report, this application ought to have been filed at the earliest, not after seven years.

11. Furthermore, if the plaintiff has made any request for a copy of the surveyor report, then the copy of that request should have filed along with this application. In the absence of any such document requesting the first defendant to furnish surveyor report, it is to be presumed that the plaintiff had in possession of the surveyor report even at the time of filing the suit. Further, in the absence of document requesting the surveyor report also leads to presumption that no such request made by the plaintiff at any point of time. This particular averment made in paragraph No.4 of the application not supported by any document. Therefore, *per se* this averment will prejudice the first defendant. Hence, this Court is not inclined to entertain this application to receive the reply statement with the delay of nearly 7 years. Accordingly, this application is dismissed.

Sd/.G.J.J.

25.02.2020

//Certified to be a true copy//

Dated this the day of 2020.

jj 02/03/2020

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.